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|-----------------|-------------|----------------------|---------------------|------------------|
| 10/628,845      | 07/26/2003  | Jill Hartwig         |                     | 5822             |

7590 05/26/2005  
Jill Hartwig  
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EXAMINER

HILL, LAURA C

ART UNIT PAPER NUMBER

3761

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/628,845

Applicant(s)

HARTWIG ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 14-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-21 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-13, drawn to a wiping system with a moisturized structure, classified in class 604, subclass 289.
- II. Claims 14-18, drawn to method making a wipe, classified in class 156, subclass 252.
- III. Claims 19-21, drawn to a wipe dispenser, classified in class 221, subclass 45.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the wiping system can be made by any sequential combination of cutting, folding and seaming such as folding first, seaming and then cutting.

Inventions II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process

(MPEP § 806.05(f)). In the instant case other processes such as injection molding can make the wipe dispenser system comprising a holder and dispenser.

Inventions III and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the wiping system with a moisturized structure does not require a dispenser. The subcombination has separate utility such as the dispenser can be used to dispense other articles such as non pre-moisturized wipes or liquid impermeable laminates.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Jill Hartwig on 16 May 2005 a provisional election was made without traverse to prosecute the invention of a wiping system with a moisturized structure, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-21 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Objections***

1. Claim 1 objected to because of the following informalities: the “hand-wearable cover” in line 4 is referred to as a “glove-like wiping sheath 104” in the specification page 9, line 11. Appropriate correction is required for improved consistency of the language of the claimed subject matter.

2. Claims 6-7 objected to because of the following informalities: the “first side portion” and “second side portion” in lines 3-4 of claim 6 and in line 7 of claim 7 are referred to as “first side edge 132 and second side edge 134” in the specification page 11, lines 15-16. Appropriate correction is required for improved consistency of the language of the claimed subject matter.

3. Claim 12 objected to because of the following informalities: the “perforation” in line 2 is referred to as “perforation lines 152” in the specification page 17, lines 2-3. Appropriate correction is required for improved consistency of the language of the claimed subject matter.

### ***Claim Interpretation***

4. The “hand-wearable cover” of claims 1-13 is interpreted to be the glove-like wiping sheath 104 as seen in figure 1.

5. The “first side portion” and “second side portion” of claims 6-7 are interpreted to be the first side edge 132 and second side edge 134 as seen in figure 3.

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6. The "perforation" of claim 12 is interpreted to be the perforation lines 152 as seen in figure 6.

7. The hand cover comprising a finger receiving portion and thumb receiving portion according to the language of claims 9-10 do not have to be portions divided separately from one another. As long as the prior art structure receives the user's fingers and thumb in some fashion, it meets the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-2, 6-13 rejected under 35 U.S.C. 102(b) as being anticipated by Finch et al. (US 5,649,336). Regarding claims 1-2 Finch et al. discloses a disposable child mitt wipe for wiping and cleaning waste from the body (col. 1, ll. 4-6), comprising:

a) a mitt/hand-wearable cover 20 for accommodating a hand of a child (col. 3, ll. 55-59);

b, d) a solution/pre-moisturizer impregnated on mitt/hand-wearable cover 20 structured for moisturizing the child's skin and improved cleaning (col. 7, ll. 43-46);

c) the mitt/hand-wearable cover 20 in one embodiment can be made of all cellulosic fibers, which inherently have high moisture absorption and are therefore fluid-

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permeable or a nonwoven mixture of cellulosic fiber and synthetic fiber, (col. 7, ll. 34-35, col. 5, ll. 59-66, col. 6, ll. 15-26);

"In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). It is well known to those skilled in the art that natural cellulosic fibers such as those cited by Finch et al. have high moisture absorption (see Textile Science by Kathryn L. Hatch, page 87). The discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old composition patentably new to the discoverer. *Atlas Powder Co. v. Ireco Inc.*, 190F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not expressly disclose not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Regarding claim 6 Finch et al. discloses a mitt/hand-wearable cover 20 comprising first and second side portions 34; opening 30 through which the child can place his hand; and first and second side portions joined to define an interior space 28 (col. 3, ll. 55-61, figures 1-2).

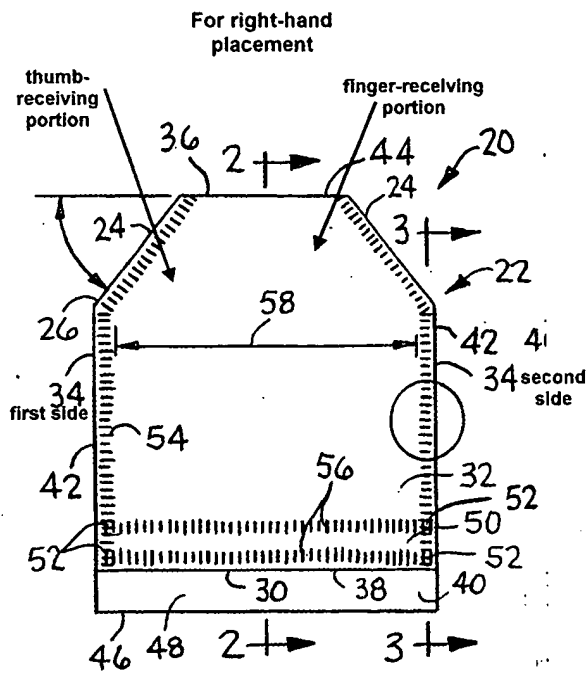
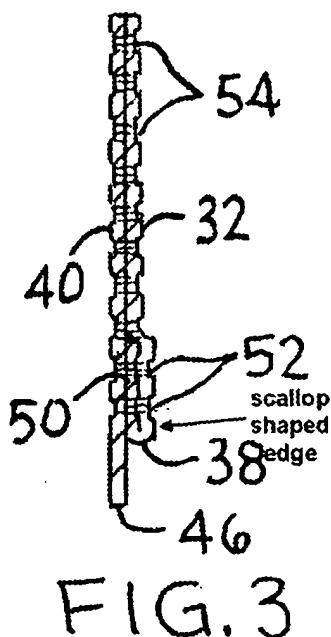


FIG. 1

Regarding claim 7 Finch et al. discloses reinforcing cuff member/grip assister 50 for allowing the child to more easily separate top layer 32 and bottom layer 40 of first and second side portions and is therefore capable of assisting the insertion of the child's hand through said opening 30 (col. 4, ll. 59-col. 5, line 4).

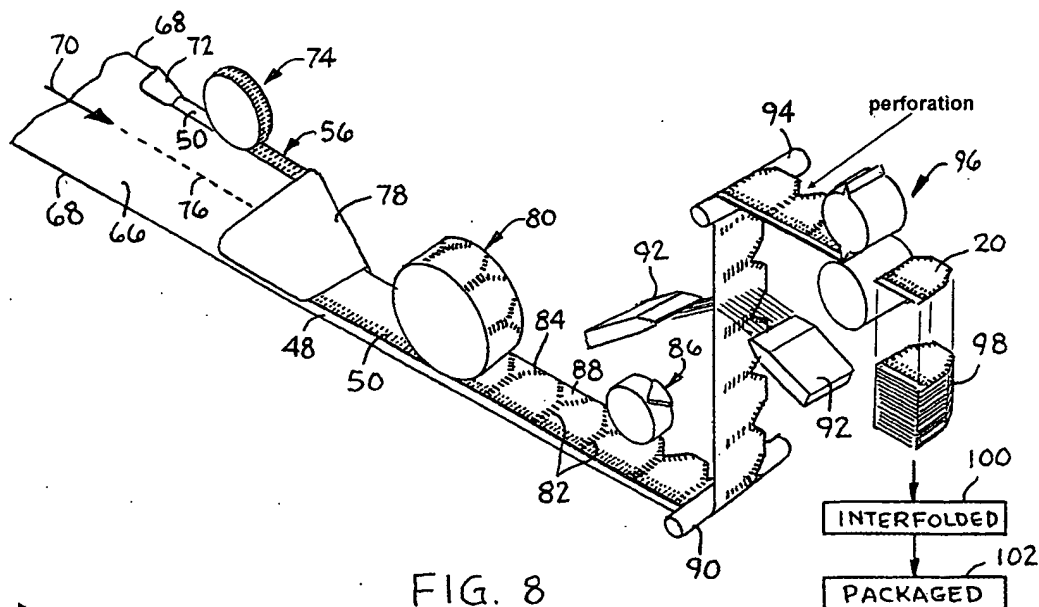
Regarding claim 8 Finch et al. discloses reinforcing cuff member/grip assister 50 that has a scalloped-shaped edge (figure 3).



Regarding claims 9-10 Finch et al. discloses a mitt/hand-wearable cover 20 arranged to receive at least one finger and a thumb of the child's hand (figure 1 above).

Regarding claim 11 Finch et al. discloses a plurality of mitt wipes/hand-wearable covers 20 are detachably joined via a cutting station 96 to form a moving material/continuous band 66 that is in a rolled configuration (col. 9, ll. 1-5, 23-26, fig. 8).

Regarding claims 12-13 Finch et al. discloses mitt/covers 106 are interfolded in that each mitt/cover 106 is folded in half with a perforation capable of assisting the user in detaching at least one mitt/cover from at least one band 66 (figure 8). Finch et al. further discloses the mitt/covers 106 interfolded to form a dispensable stack 98 (col. 9, ll. 42-46).



9. Claims 1-2, 6, 9-10 rejected under 35 U.S.C. 102(b) as being anticipated by Bouvier (FR 2694877A1). Bouvier discloses a disposable absorbent/permeable toilet glove/hand-wearable cover 1 which is capable of retaining bodily waste during wiping in the form of a pocket by folding over a rectangular piece of material to produce front and rear faces 3,4 (abstract). Bouvier further discloses the material of the hand-wearable cover 1 is impregnated with a solution of soap or detergent and is biodegradable/dispersible and nonwoven and has portions arranged to receive at least one finger and a thumb of the child's hand (abstract and figure 1).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 3-5 rejected under 35 U.S.C. 103(a) as being unpatentable over Finch et al. (US 5,649,336). Regarding claim 3 Finch et al. discloses a mitt 20 for wiping and cleaning waste from the body with at least two layers 32, 40 of material at mitt/cover opening 30 (col. 1, ll. 4-6, col. 4, ll. 9-11, figure 2). Finch et al. does not expressly disclose the cover comprises a single layer fabric. It would be obvious to one of ordinary skill in the art at the time the invention was made to modify Finch et al. to include a single layer fabric cover since Finch et al. discloses a liquid-permeable mitt for wiping and cleaning waste from the body.

Regarding claim 4 Finch et al. discloses mitt/cover 20 material that can obviously be modified to include a single layer fabric as discussed in rejected claim 3. Finch et al. further discloses a mixture of synthetic and cellulosic fibers entangled together to form a nonwoven or in another embodiment the material can be all cellulosic fibers as discussed in rejected claim 1(c). Finch et al. does not expressly disclose the cellulosic fibers are non-woven. It would be obvious to one of ordinary skill in the art at the time the invention was made to modify Finch et al. to include at least one non-woven

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material since Finch et al. discloses a liquid-permeable mitt for wiping and cleaning waste from the body with one embodiment of the cover material (synthetic and cellulosic fiber mixture) being hydro entangled to form a nonwoven.

Regarding claim 5 Finch et al. discloses mitt/cover 20 can be flushed in a toilet after the mitt/cover 20 has been used (col. 3, ll. 46-51). Finch et al. further discloses the synthetic fibers can include water-dispersible polymers capable of being used as binders such as polyethyloxazoline, polyethylene oxide, polyvinyl acetate (col. 7, ll. 37-42). If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Fike reference, US patent no. 674,913, is cited for showing an absorbent hand-wearable bathing glove with soap compound and thumb and finger-receiving portions separate from each other. The Rosengren reference, US patent no. 1,209,763, is cited for showing a waterproof mitten with soap supply and thumb and finger-receiving portions separate from each other. The Poncy reference, US patent no. 6,607,226, is cited for showing a multi-layer hand cover for collecting pet excrement comprising a biodegradable exterior layer and a water soluble plastic interior layer. The Kron reference, US patent no. 3,409,010, is cited for showing a disposable absorbent mitt, which partially covers the hand and is impregnated with medicament. The James

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et al. reference, US patent no. 6,145,155, is cited for showing a fluid impermeable, pre-moisturized, disposable hand cover with multiple layers and a handle/grip assister:

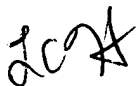
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



Larry I. Schwartz  
Supervisory Patent Examiner  
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